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Index #: E2024003035

Date: 04/22/2024

Dias, Liyanagamage Ranganath Prabashwara

Time: 2:58:18 PM

University of Rochester

Total Fees Paid: $0.00

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State of New York

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WARNING – THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 317-a(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

LIYANAGAMAGE RANGANATH PRABASHWARA DIAS,

Petitioner,

-against-

UNIVERSITY OF ROCHESTER,

Respondent.

for a Judgment pursuant to Article 78 of the Civil Practice Law and Rules

Index No. E2024003035

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that the Decision and Order issued by the Hon. Joseph D. Waldorf and attached hereto was duly issued in the above-referenced action on April 19, 2024, and duly entered in the office of the Monroe County Clerk on April 19, 2024.

Dated: April 22, 2024

BOND, SCHOENECK & KING, PLLC

By: s/ Laura H. Harshbarger

Laura H. Harshbarger, Esq.
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University of Rochester
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17715872.3 4/22/2024

TO: J. Morgan Levy, Esq.(via NYSCEF electronic filing)
Attorney for Petitioner
J. Morgan Levy Firm
24 N. Main Street, Ste 2
Fairport, NY 14450
E: Morgan@jmorganlevyfirm.com
P: 585-678-1160

CERTIFICATE OF SERVICE

I certify that on April 22, 2024 I served a copy of the attached Notice of Entry by filing a copy of same on the NYSCEF filing system on the following:

J. Morgan Levy, Esq.(via NYSCEF electronic filing)
Attorney for Petitioner
J. Morgan Levy Firm
24 N. Main Street, Ste 2
Fairport, NY 14450
E: Morgan@jmorganlevyfirm.com
P: 585-678-1160

s/ Cynthia Reid
Cynthia Reid

MONROE COUNTY CLERK'S OFFICE

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Date:

Dias, Liyanagamage Ranganath Prabashwara

Time:

University of Rochester

Total Fees Paid: $0.00

Employee:

State of New York

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JAMIE ROMEO

MONROE COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of
LIYANAGAMAGE RANGANATH
PRABASHWARA DIAS,

Petitioner,

DECISION, ORDER & JUDGMENT
Index No. E2024003035
Index No. E2023014993

vs.

UNIVERSITY OF ROCHESTER,

Respondent.

Submitted on April 12, 2024
Counsel:
J. Morgan Levy, Esq., J. Morgan Levy Firm PLLC, for Liyanagamage Ranganath Prabashwara Dias ("Petitioner").
Laura H. Harshbarger, Esq. and Liza R. Magley, Esq., Bond, Schoeneck & King, PLLC, for University of Rochester ("Respondent").

Joseph D. Waldorf, J.,

This case presents the question of whether or not a non-tenured assistant professor accused of research misconduct may utilize an article 78 proceeding to prohibit a university from concluding its investigation and enjoin the university from taking any adverse employment action until the professor's other grievances are adjudicated. Because the petition has been brought before Respondent's final determination it is not ripe for judicial review and thus it is hereby ADJUDGED that the petition is DENIED and the proceeding is DISMISSED as premature.[1]

[1] Petitioner's requests for a preliminary injunction and evidentiary hearing are thus rendered academic.

In 2017, Petitioner was hired as a non-tenured assistant professor for Respondent's Departments of Mechanical Engineering and Physics and Astronomy. Petitioner's research was funded by awards from the National Science Foundation ("NSF") and he published articles based on said research in leading scientific journals including *Nature*, *Physical Review Letters*, and *Chemical Communications*. These articles were later retracted by the publishers. In March of 2023, NSF notified Respondent concerning complaints alleging that Petitioner committed research misconduct. NSF thus directed Respondent to conduct an investigation into the allegations.

Respondent thereafter initiated the procedures contained in its Research Misconduct Policy which has four stages: 1) allegation; 2) inquiry; 3) investigation; and 4) adjudication and further action (NY St Cts Elec Filing [NYSCEF] Doc No. 55, copy of the University's Policy on Research Misconduct at ¶ 16). Specifically, pursuant to the Research Misconduct Policy's stages, Respondent's Provost has recommended Petitioner's termination and that recommendation is pending before a University Committee on Tenure and Privileges ("UCTP"). Pursuant to the Faculty Handbook's provisions concerning research misconduct, the UCTP's hearing committee must "accept the results of University investigations…completed under those policies as the factual basis concerning the alleged policy violations." (NYSCEF Doc No. 7, Faculty Handbook at 46). The UCTP – where Petitioner has a right to be heard – will make its recommendations which will be put before Respondent's President. Should the President determine that termination is warranted, the Board of Trustees will make the final decision.

Prior to a final determination by Respondent, Petitioner commenced the instant article 78 proceeding seeking a judgment that Respondent's research misconduct investigation determination is arbitrary and capricious and that Respondent be "enjoined from taking any adverse action against Petitioner until a grievance committee establishes an unbiased factual record and an unbiased investigation committee is convened to evaluate the allegations of research misconduct." (NYSCEF Doc No. 1, Petition at 25).

Petitioner alleges that the Investigation Committee is biased, conflicted, and improperly constituted in several respects. Additionally, prior to the Investigation Committee concluding its work, Petitioner's students were removed from his laboratory, teaching, and mentoring duties. This, Petitioner alleges – amongst several other actions by Respondent – constitutes further evidence of Respondent's pre-determination of his guilt.

As a preliminary matter, a previous article 78 petition involving the same parties and related issues was commenced on December 13, 2023 under Index No. E2023014993 (NYSCEF Doc No. 1, combined Notice of Petition and Petition). That proceeding involves the same parties and overlaps with some of the issues presented in Index No. E2024003035. Because the Notice of Petition and Petition under Index No. E2023014993 were filed in a combined document, a return date had not been set. Ultimately, at oral argument upon Index No. E2024003035 the parties agreed that the petition and issues presented under Index No. E2023014993 were subsumed into the petition contained in Index No. E2024003035. Upon the parties' joint assent that the petition under Index No. E2023014993 was subsumed under Index No. E2024003035, the Court Orders the matters consolidated and merged under Index No. E2024003035.

Turning to a second preliminary issue, the Court must consider Respondent's seventh and eighth affirmative defenses and objections in point of law that the matter is not ripe for judicial review upon Petitioner's alleged failure to exhaust administrative remedies and that the determination sought to be reviewed is non-final. The Court agrees.

"[A]bsent extraordinary circumstances, courts are constrained not to interject themselves into ongoing administrative proceedings until final resolution of those proceedings…" (*Tahmisyan v Stony Brook University*, 74 AD3d 829 [2d Dept 2010] [dismissing article 78 proceeding to prohibit receipt of evidence in academic disciplinary hearing where said hearing has not yet been held and as such the issues "are not yet ripe for judicial review."]; *see also e.g.*, *Matter of Williams*, 245 AD2d 1014 [4th Dept 1997] [reversing Supreme

Court order staying professional misconduct proceeding pending determination of evidentiary dispute]). Under CPLR 7801, an article 78 proceeding "shall not be used to challenge a determination…which is not final…"

Here, both parties agree that Respondent's research misconduct committee report – labeled as a "Final Investigation Report" – has been completed thus the findings of research misconduct are indeed considered final. However, there exists additional adjudicative administrative steps before a final determination as to what sanctions, if any, may be rendered by Respondent. Specifically, the faculty committee must consider the Provost's recommendation to terminate Petitioner and issue its own recommendations; the President must review those recommendations and make his or her own determination. And only if the President determines that termination is warranted is the issue presented to the Board of Trustees to make the final decision.

As such, Petitioner invites judicial intervention during preliminary steps of Respondent's decision-making process; the Court declines this invitation (*See generally*, *Rochester Telephone Mobile Communications v Ober*, 251 AD2d 1053, 1054 [4th Dept 1998] [dismissing article 78 proceeding on ripeness grounds seeking review of non-final agency determinations where "[t]he alleged harm 'may be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party.'"]; *Essex County v Zagata*, 91 NY2d 447, 453-56 [1998]). Based on additional administrative steps yet to be taken – some of which invite Petitioner's involvement – and a final and binding determination yet to be made by Respondent, the instant petition is not ripe for judicial review.

Accordingly, it is hereby

ORDERED, that Index No. E2023014993 is consolidated and fully merged into a single special proceeding under Index No. E2024003035, and it is further

ADJUDGED, that the petition is DENIED and the proceeding is DISMISSED as premature. Any arguments or prayers for relief not specifically addressed herein are rendered academic.

Dated: April 19, 2024
Rochester, New York

Honorable Joseph D. Waldorf
Supreme Court Justice